(4)

No. 89-1363

Supreme Court, U.S.
FILED
JUN 5 1990
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STATES OF AMERICA, PETITIONER

v.

DARLINA K. FRANCE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 26, 1990
CERTIORARI GRANTED APRIL 23, 1990

BEST AVAILABLE COPY

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INDEX

	Page
Relevant Docket Entries	II
Indictment	1
Transcript of Voir Dire of Apr. 27, 1987	3
Judgment and Probation/Commitment Order	56
Order allowing Certiorari	58

II

RELEVANT DOCKET ENTRIES

I. United States District Court for the District of Hawaii

1. December 22, 1986—Complaint filed
2. December 29, 1986—Detention Hearing
3. January 14, 1987— Indictment issued
4. April 21, 1987— Government's Proposed Voir Dire Questions
5. April 21, 1987— Defendant's Proposed Voir Dire Questions
6. April 27, 1987— Jury Selection
7. May 1, 1987— Verdict (Guilty as to Cts 2, 3 and lesser included on Ct. 1)
8. August 17, 1987— Sentencing
9. August 17, 1987— Judgment and Commitment
10. Sept. 8, 1987— Amended Notice of Appeal

III. United States Court of Appeals for the Ninth Circuit

1. November 10, 1988—Oral Argument
2. July 7, 1989— Case Submitted After Supplemental Briefing
3. September 13, 1989—Opinion reversing judgment filed
4. January 16, 1990— Order denying rehearing

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CR. No. 87-00079

UNITED STATES OF AMERICA, PLAINTIFF

vs.

DARLINA K. FRANCE, DEFENDANT

INDICTMENT

[18 U.S.C. § 113(a), 113(f), 924(c)]

INDICTMENT

COUNT 1

The Grand Jury charges:

On or about December 20, 1986, at the Aliamanu military housing area, a place within the special maritime and territorial jurisdiction of the United States, in the District of Hawaii, DARLINA K. FRANCE, defendant herein, did assault Neal France with intent to commit murder;

All in violation of Title 18, United States Code, Section 113(a).

COUNT 2

The Grand Jury further charges:

On or about December 20, 1986, at the Aliamanu military housing area, a place within the special maritime

and territorial jurisdiction of the United States, in the District of Hawaii, DARLINA K. FRANCE, defendant herein, did assault Neal France with that assault resulting in serious bodily injury to Neal France;

All in violation of Title 18, United States Code, Section 113(f).

COUNT 3

The Grand Jury further charges:

On or about December 20, 1986, at the Aliamanu military housing area, a place within the special maritime and territorial jurisdiction of the United States, in the District of Hawaii, DARLINA K. FRANCE, defendant herein, did, during and in relation to the crimes of violence of assaulting and shooting Neal France, use and carry a firearm;

All in violation of Title 18, United States Code, Section 924(c).

DATED: January 14, 1987, at Honolulu, Hawaii.

A TRUE BILL

/s/ Betty Ann Keach
Foreperson, Grand Jury

/s/ [illegible]
United States Attorney

/s/ [illegible]
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Case No. Criminal 87-00079

UNITED STATES OF AMERICA, PLAINTIFF

vs.

DARLINA K. FRANCE, DEFENDANT

Honolulu, Hawaii
Monday, April 27, 1987 – 10:00 a.m.

[Filed Mar. 28, 1988]

Jury Selection

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BERT S. TOKAIRIN
UNITED STATES MAGISTRATE

APPEARANCES:

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Proceedings recorded by electronic sound recording. Transcript produced by transcription service.

DISTRICT COURT OF HAWAII,
MONDAY, APRIL 27, 1987, 10:00 A.M.

[1] **PROCEEDINGS**

(Jury in at 10:00 a.m.)

(Call to Order of the Court)

THE CLERK: Please be seated. Criminal 87-00079, United States of America versus Darlina France. Case is called for jury selection.

MR. BENNETT: Good morning, Your Honor. Mark Bennett, the United States, and with me at counsel table is John Blake, Special Agent for the FBI here in Honolulu.

MR. CASSIDAY: Good morning, Your Honor. Ben Cassiday representing Karen France who's present in Court. Your Honor, she goes by the name of Karen rather than Darlina, which is her middle name.

THE CLERK: All right.

MR. CASSIDAY: Thank you.

THE COURT: She goes by what name?

MR. CASSIDAY: Karen.

THE COURT: This is the United State District Court for the District of Hawaii. This Court has adopted electronic sound recording as the official record of proceedings. All persons are requested to speak into a microphone. The audio operator will remind anyone who is not being recorded properly to speak more clearly or closer to the microphone. Attorneys are likewise reminded to [2] identify themselves and whom they represent whenever addressing the Court. Will the attorneys, all the attorneys, approach the bench?

(Bench conference on the record)

THE COURT: This is just a preliminary conference. We'll pick the criminal case first. Next is the attorneys for the civil case. The criminal case we'll pick 30—or try 32. We'll pick 12 jurors, two alternates. Peremptory challenges will be 7-11. Seven for the Government, 11 for the defendant. For the civil case, we'll pick 16—16, we'll pick six and two alternates. Peremptory will be 4-4. You pick, then you pick. You've been through this before? (Indiscernible.)

MR. BENNETT: In the—

THE COURT: I'll be calling you back—

MR. BENNETT: —in the criminal you have both sides strike at the same time.

THE COURT: You'll be going—you submit your seven. He submits his eleven.

MR. CASSIDAY: We're not going to ask back around?

THE COURT: No.

(Indiscernible.)

MR. BENNETT: Magistrate Conklin does it the other way. I can never remember.

THE COURT: Oh, I'm sorry.

[3] (End of bench conference)

THE COURT: Good morning, ladies and gentlemen of the prospective jury panel. I am the United States Magis-

trate, Bert S. Tokairin and I will be assisting the parties involved in two separate trials to qualify and select two separate jury panels to hear these cases. One jury panel will hear and decide a criminal case. The second jury panel will hear and decide a civil case. Panel one, which will hear a criminal case, which the case will commence on Tuesday, that's tomorrow, April 28 at 9:00 a.m. The trial judge will be the Honorable Alan A. McDonald. He is a visiting District Judge from the Eastern District of Washington, of Spokane. He's coming in from Spokane.

Panel two will hear a criminal case. Will commence also tomorrow, Tuesday, April 28 at 9:00 a.m. The trial judge for the civil case will be the Honorable Robert J. Kelleher, visiting Senior Judge from California, so you have two visiting judges.

Now, if you are not selected for the first jury panel you may be selected to serve in the second jury panel, and for this reason the Court and the parties request that you give your full attention to the proceedings.

Last week, Thursday and Friday, the Court received, reviewed, and acted upon written requests for excuses submitted by you prospective jurors, so those who [4] desire to have their excuses considered have done so through written requests. Since there may be last minute change in circumstances for some of you here the Court nonetheless will receive and consider any additional request for excuses. Please do not request excuses based on employment hardships because it will not be sympathetically heard. Frankly, all of you are working people. All of you are sacrificing. All of you are making sacrifices to perform your civil duty as U.S. citizens, so I will not consider employment excuses.

Now, before we begin the jury selection process I like to thank every one of you for being present here this morning in response to the government's call to perform a very vital

and indispensible role as U.S. citizen. Our Court will not function if you do not serve as our jurors. Good example is this morning, we have a criminal case and a civil case, and without your cooperation and assistance we, the judicial system, will not function. Efficient jurors are men and women of sound judgment, absolute honesty, and complete sense of fairness. Jury service is a high duty of citizenship. This morning you are being asked by the parties to judge them and the system is based on the proposition that the law flows from the people. Now, for those of you who have previously served as a juror I ask your impatience and indulgence as the Court reviews the jury [5] selection process this morning.

Now, you prospective jurors sitting in Court this morning truly represent a cross section of the American public and this community with a corresponding cross section of personal, educational, cultural, and employment backgrounds you're bringing to this courtroom. Different experiences, beliefs, prejudices, if any, that I hope balance each other out. The bottom line is for each of you to recognize any bias or prejudice you may have and to conscientiously not permit it in any way to influence your finding in deciding these cases. We all know that we cannot instaneously erase any bias or prejudice we may have just because we walk through the front door of this courtroom. It's impossible, so the thing is to remember your bias, or any prejudice you may have and see if you can suppress it.

The jury system only ask of its jurors to render a fair and impartial verdict. Fair and impartial to both sides, and this is based on the testimony and evidence received by you during the trial and the instructions on the law as it applies to this case as given to you by the trial judge at the end of the trial.

The Court's responsibility is to conduct the trial of the case in an orderly, fair, and efficient manner, to rule upon questions of law arising in the course of the trial, and to instruct you as to the law which applies to [6] this case. It is your duty to accept the law as the Court states it to you, notwithstanding what you may feel the law is or the law should be. The function of the jury is to determine the facts. You are the sole and exclusive judges of the facts and you alone determine the weight, the effect, and the value of the evidence as well as the credibility of the witnesses. That is who to believe. You must consider and weigh the testimony of all witnesses who have appeared before you and you alone are to determine whether to believe any witness and extent to which any witness should be believed. It is your responsibility to resolve any conflicts in testimony which may arise during the course of trial and to determine where the truth lies. You may, as jurors, accept or reject the testimony of any witness in whole or in part. There is absolutely no rule of law that says one person is more believable than the next, and whether a person is believable or not believable, you will be the ultimate judge based on some of the guidelines that's given to you and the instructions on the same subject that will be given to you by the trial Court.

There may be times during the jury selection process that the attorneys will approach the bench to discuss a matter out of your hearing like we just did this morning. The bench conferences involves questions of law relating to the Court's functions therefore bench conferences [7] do not involve anything necessitating your participation or action, and the law requires that the matter be discussed at the bench, either bench or side bar conferences. Therefore you are to draw no inference for or against the party who seeks or does not seek the bench conference.

I will assume that having diligently raised your hands up for jurors you are at this point of time somewhat familiar with the jury selection process. For our first jury panel, which is a criminal case, the Court – the clerk will randomly pick and draw out 32 names from which 12 jurors and two alternate jurors will be qualified. Each of the 32 prospective jurors shall be assigned a juror number. It is very important that you remember your assigned jury number because hereafter you will be identified by your juror number. Identifying our jurors number will greatly assist the Court, the attorneys, and the court clerk in monitoring and identifying the many faces and many names. After the 32 names are drawn by the clerk the jurors will be challenged for cause. Well, challenge for cause sounds intimidating, but all that means is that you will be asked to be excused for a specific reason. The reason will vary from prospective juror to prospective juror. The fact that you may be so excused from hearing this case has absolutely no reflection upon your integrity or character since you may be perfectly qualified and – and acceptable to hear and [8] decide another case, be it a civil case or a criminal case. It may just so happen that you may not be qualified to hear a particular case for reasons beyond your control. For those of you who may be excused for cause you will be replaced by others in a jury panel this morning. For this reason I previously told you, please pay attention because you may be called to replace another juror.

After we have completed excusing jurors for cause the Court will then exercise preemptory challenges to excuse additional jurors from serving as jurors in this case, and I – again, I mention this case only.

Lastly, it's always a good idea for the Court to select alternate jurors to sit and hear the case just in case we lose a regular juror for any reason, like you and I carry a spare tire in case of emergency. However, if – at the end of the

trial we still have the original jurors then the alternate jurors will be excused and they will not participate in the jury deliberations.

A few cautionary instructions that you follow will greatly assist the Court in expediting the selection this morning. If during a jury selection a recess is called please return to the courtroom on time, so I suggest that you not roam beyond the fourth floor. We've had cases where some people have gone over to the cafeteria for coffee and delayed jury selection for a long time. I suggest that you [9] synchronize your watch with the courtroom clock—wall clock, and during the trial I'm sure the trial judges also follow the wall clock. The wall clock may not be absolutely correct, but at least we'll all be on the wrong time.

Now, don't feel that you're a captive here, you're prisoner now. If you feel that you like to leave the courtroom just raise your hand, come up here, I'll listen to you privately. I don't want you to feel that you're stuck in here you can't move. Anytime you feel like—you like to address the Court raise your hand.

Lastly, in answering—or asking a question please follow the following rules, first stand up, give you juror number, and then your last name. This way this will alert all the attorneys and the clerk as to who is speaking. For instance, stand up and say, "Juror 33, Kealohanui", or "Juror 13, Chang", and this will alert the parties.

All right, at this time I will ask the clerk to randomly draw 32 prospective juror names from the wheel. Now, these prospective jurors when called originally will fill up this jury box, and those of you, after it's filled up will occupy those seats on the right side of the courtroom so as it starts filling up you can move over this way. All right? Any visitors here I will ask to sit on the left series of chairs there. These—these—all right.

THE CLERK: Juror Number 23, two three, George Maehara.

(Plause)

THE CLERK: Juror Number 35, three five, Catalina Portillo.

(Pause)

THE CLERK: Juror Number 1, William Akana.

(Pause)

THE CLERK: Juror Number 38, three eight, Yolanda Rivera.

(Pause)

THE CLERK: Juror Number 16, one six, On Sun Kim.

(Pause)

THE CLERK: Juror Number 44, four four, Jack Yama.

(Pause)

THE CLERK: Juror Number 37, three seven, Linda Rivera.

(Pause)

THE CLERK: Juror Number 9, Margaret Donegan.

(Pause)

THE CLERK: Juror Number 5, Harriott Burrell.

(Pause)

THE CLERK: Juror Number 55, five five, Harold Suetani.

(Pause)

THE CLERK: Juror Number 17, one seven, Harry Kon.

[11] (Pause)

THE CLERK: Juror Number 52, five two, Walter Higa.

(Pause)

THE CLERK: Juror Number 24, two four, Michael Makua.

(Pause)

THE CLERK: Juror Number 54, five four, Manuel Perreira.

(Pause)

THE CLERK: Juror Number 42, four two, Theresa Warner.

(Pause)

THE CLERK: Juror Number 51, five one, Cathy Kim.

(Pause)

THE CLERK: Juror Number 3, Lisa Bernhardt.

(Pause)

THE CLERK: Juror Number 50, Sally Kido.

(Pause)

THE CLERK: Juror Number 47, four seven, Thelma Aana.

(Pause)

THE CLERK: Juror Number 32, three two, George Nip.

(Pause)

[12] THE CLERK: Juror Number 43, four three, David Wilson.

(Pause)

THE CLERK: Juror Number 4, William Biga.

(Pause)

THE CLERK: Juror Number 53, five three, James Kanemaru.

(Pause)

THE CLERK: Juror Number 15, one four, Ray Ishihara.

(Pause)

THE CLERK: Juror Number 20, two zero, Norman Lee.

(Pause)

THE CLERK: Juror Number 36, three six, Felicitas Remigio.

(Pause)

THE CLERK: Juror Number 22, two two, Jason Lum.

(Pause)

THE CLERK: Juror Number 13, one three, Jon Inafuku.

(Pause)

THE CLERK: Juror Number 8, Justina Desuacido.

(Pause)

THE CLERK: Juror Number 59, five nine, David Wong.

[13] (Pause)

THE CLERK: Juror Number 18, one eight, Garret Kuehu.

(Pause)

THE CLERK: Juror Number 41, four one, Joseph Tato. That's 32, Your Honor.

THE COURT: All right, thank you.

(Pause)

THE COURT: As mentioned earlier, the first jury panel will hear a criminal case. Has anyone here previously served as a juror either in a criminal or a civil case? Raise your hand and I'll get to you. Start with the jury box first off. Give me your juror number, your last name, and tell me whether it was a criminal case, civil case, whether it was a state or federal case, and then approximately what year you served as a juror. Now, I don't expect you to—use your best—best guesstimate. All right, your number?

JUROR 55: Fifty-five.

THE COURT: Fifty-five? Your last name?

JUROR 55: Suetani. Suetani.

THE COURT: Suetani. And you served civil or criminal case?

JUROR 55: Civil.

THE COURT: Civil case. State or federal?

[14] JUROR 55: State.

THE COURT: And was this criminal or—I'm sorry, was this—what year was this?

JUROR 55: I don't know. Under Judge Fukushima.

THE COURT: On, that's a long time ago. At least 10 years ago. All right, now, have you served in a criminal case?

JUROR 55: No.

THE COURT: No. All right, first row, anyone else? Second row? All right, your number and name?

JUROR 37: Thirty-seven, Rivera.

THE COURT: And this was a civil or criminal case?

JUROR 37: It was a criminal—

THE COURT: Criminal.

JUROR 37: —First Circuit Court and—

THE COURT: State case? What year? What year?

JUROR 37: Oh, gosh, its—

THE COURT: How many years ago?

JUROR 37: In the 70's—the latter 70's or—

THE COURT: In the 70's. All right, thank you. Anyone else in the jury box? All right, let's go down the first row there. I see a hand.

JUROR 3: Number 3, Lisa—

THE COURT: Number 32? Your last name?

JUROR 3: Bernhardt.

[15] THE COURT: Yes, Bernardt. Was this a civil or a crimimal case?

JUROR 3: Criminal.

THE COURT: And state or federal?

JUROR 3: State.

THE COURT: Approximately what year?

JUROR 3: '85.

THE COURT: '85. All right, thank you. First row? Yes.

JUROR 47: State Court.

THE COURT: No, your number and name.

JUROR 47: Forty-seven. Was a—

THE COURT: Your name?

JUROR 47: —civil case. Thelma Aana.

THE COURT: Aana, and it's criminal or civil case?

JUROR 47: Civil case.

THE COURT: And this is state or federal?

JUROR 47: State.

THE COURT: State.

JUROR 47: About three years ago.

THE COURT: Two years ago.

JUROR 47: Two to three years ago.

THE COURT: All right, thank you. Second row. All right, your number and name.

JUROR 20: Number 20, Lee.

[16] THE COURT: Eight?

JUROR 20: Twenty.

THE COURT: Twenty. Your last name?

JUROR 20: Lee.

THE COURT: All right, is this a civil or criminal case?

JUROR 20: Both.

THE COURT: All right. Is it federal or civil? I'm sorry, is it—

JUROR 20: State.

THE COURT: —federal or state?

JUROR 20: State.

THE COURT: State would be which one? The criminal?

JUROR 20. Both.

THE COURT: Both were in State Court.

JUROR 20: Yes.

THE COURT: All right, and the—when was the civil case?

JUROR 20: About two or three years ago.

THE COURT: And your criminal case?

JUROR 20: Same time.

THE COURT: Two to three years. All right, third row. All right, number and name?

JUROR 8: Eight, Desuacido.

[17] THE COURT: This was a civil or criminal case?

JUROR 8: It was a civil case.

THE COURT: State or federal?

JUROR 8: State.

THE COURT: What year?

JUROR 8: 1978.

THE COURT: All right, thank you. Anyone else in that section there? Let's go to the center section first row. Second row. All right, you number—oh, first row.

JUROR 57: Excuse me, 57, Vrana.

THE COURT: And this is civil or criminal case?

JUROR 57: It's a criminal case.

THE COURT: And state or federal?

JUROR 57: State.

THE COURT: What year?

JUROR 57: About 1982.

THE COURT: 1982. Thank you. Second row.

JUROR 27: Twenty-seven, Marouchoc.

THE COURT: State—is this civil or criminal case?

JUROR 27: Criminal.

THE COURT: And state or federal?

JUROR 27: State.

THE COURT: What year?

JUROR 27: One in either '83 and '84 and then one [18] in '84 and '85.

THE COURT: All right, thank you. Third row. Fourth row. Anyone else in the center section? All right, did I miss anyone? All right, thank you. As indicated, we have people that served in a civil case as well as a criminal case, or some who only served in one case, either civil or criminal. Let me explain the difference in the standard of proof as required in a criminal case as compared to a civil

case so that you will not confuse the different standard of proof required in each case. Now, the trial judge will explain this to you in detail but I like to put you on notice at this early stage. In a civil case or a suit like say, typical is auto accident, you feel that the other party struck you at the intersection, you feel that he is wrong, he should pay for you damages. In order to win and collect damages for your automobile the plaintiff, that's you who's suing, must prove your case by a preponderance of the evidence. I'm sure you've heard the word preponderance of the evidence. Preponderance of the evidence in a civil case means anything over 50 percent in your favor will win. This is if the jury finds the evidence favoring the plaintiff is anything over 50 percent the plaintiff will win. That is plaintiff's evidence is better than the defendant's over 50 percent.

However, in a criminal case, such as this, the [19] government must prove the guilt of the defendant beyond a reasonable doubt. So you've heard also the word beyond a reasonable doubt, so you have a difference of preponderance of the evidence in a civil suit, and beyond a reasonable doubt in a criminal case.

I like to illustrate the difference by use of this ballpoint pen. If the ballpoint pen is the scales of justice, in a civil case preponderance of the evidence, anything more than 50 percent the plaintiff will win and collect money damages, so anything slightly tipping the scale in the plaintiff's favor will win. In a criminal case the burden is on the government to prove its case beyond a reasonable doubt. This scale must dip considerably. There's a big difference in the standard. Again, the trial Court will explain to you in detail the standard you are to apply in the case that you are hearing.

Has any prospective juror served previously as a juror either in—has served in a grand jury—grand jury either in

a state or federal court? All right, the record will note no response.

(Pause)

THE COURT: This trial is estimated to take approximately five days. Do any of you have previously engaged yourself to be elsewhere on business or a planned vacation thus preventing you from attending this case within [20] the time limit of five days? Now, this is—you must show that you have a planned vacation, you have a plane ticket and you have a hotel reservation. All right? I don't want you to suddenly decide you're gonna take a trip. All right, you have one?

JUROR 17: Yes, sir.

THE COURT: Anyone else? All right, would you come up on this side bar and I'll talk to you?

(At the side bar on the record)

THE COURT: Mr. Chanin, would you like to—

JUROR 17: Seventeen, sir. Kon. Kon, K-o-n.

THE COURT: Okay, fine. This is Juror 17, Mr. Kon. What's your problem?

JUROR 17: Yeah, my wife—I just got married in February. She's having complications with birth right now.

THE COURT: No, again, you weren't listening. I said taking vacations.

JUROR 17: Well,—

THE COURT: A vacation.

JUROR 17: —yeah, she lives at Vancouver, B.C.

THE COURT: But what—when—

JUROR 17: Well, I work for the airline. I was supposed to leave yesterday, so—I was told to come here 'cause of the jury duty selection, so—

[21] THE COURT: Didn't you submit that with your request?

JUROR 17: I just found out Saturday by phone call, so I won't be able to get out till Saturday, actually. This—because I don't have any flights out till Saturday. I'm an employee for the airlines.

THE COURT: So you can sit until this weekend?

JUROR 17: Up to Saturday. I'm not sure, you know, how long the jury's—

THE COURT: Well,—

JUROR 17: —gonna go on.

THE COURT: —we—we cannot guarantee you it will stop exactly on Friday.

JUROR 17: Yeah, so I—I just wanted to let you know, you know, my—

THE COURT: I think the judge is taking Friday off.

MR. BENNETT: That was—that was Judge Kelleher I thought.

THE COURT: I think Kelleher's probably—

JUROR 17: She's a resident of Vancouver, B.C.

THE COURT: What's her problem?

JUROR 17: She's pregnant.

THE COURT: Well, how many months?

JUROR 17: She's only five.

THE COURT: But there's—there's no complications yet.

JUROR 17: Well, what—phone call I had Saturday is—well, she said, "Something's wrong with the baby. It's turning an opposite way right now." (Indiscernible.)

THE COURT: Yeah, I—

JUROR 17: I'm not sure as to the reversing (indiscernible).

THE COURT: I'm gonna put a question mark by it. Okay, bring in the next victim. (Indiscernible.)

THE COURT: Sir, I have no letter here and now what's your number?

JUROR 44: Forty-four.

THE COURT: Forty-four?
JUROR 44: Yeah.
THE COURT: What's your name?
JUROR 44: Yama.
(Remainder of discussion at side bar with Juror 44 indiscernible)
(End of discussion at side bar)
THE COURT: Mr. Kon, you've got May 8, right?
JUROR 17: Pardon?
THE COURT: May 8 is your date? Look at the letter.
JUROR 17: Oh.
THE COURT: No, I'm sorry, not Mr. Kon, but Mr. Yama.
JUROR 44: Is that an eight?
THE COURT: Eight. All right. You're all right. You can serve. Anyone here not feeling well this morning, feeling ill? All right, record will note no response. Anyone here who has a physical impairment? For instance if you're hard of hearing, medically you're hard of hearing or [24] you have severe lower back problems that you cannot sit for any length of time, maybe one hour.
JUROR 16: Your Honor, I have—
THE COURT: All right, one minute now. Anyone else? All right, will you come up to side bar?
(At side bar on the record)
JUROR 16: Juror 16.
THE COURT: Juror—Juror 16?
JUROR 16: Kim.
THE COURT: Kim?
JUROR 16: K-i-m.
THE COURT: And what's your medical problem?
JUROR 16: My medical problem is that I had surgery on my spine and they removed two of my disks.
THE COURT: When was this?

JUROR 16: In 1982. I cannot—my (indiscernible). I cannot for long sit. I have to stand up and like that, but the pressure.
THE COURT: How about one hour?
JUROR 16: Well, about 45 minutes or something when I feel the pain, and I don't want to take medication if I'm going to serve on the jury, it might distort my mind.
THE COURT: You have to feel the kinds of pain?
JUROR 16: After 45 minutes I have to stand up. If you don't mind me standing up?
THE COURT: No, well, we want you to pay attention [25] we don't want you to be worrying about your back problem.
JUROR 6: Plus, I'm—I'm just recovering from a heart attack that happened in February.
THE COURT: Who's your orthopedic surgeon?
JUROR 16: Eugene Banks (phonetic).
THE COURT: And you're still under this care?
JUROR 16: Yeah, I see him only once a year now.
THE COURT: Well, are you on medication?
JUROR 16: Yes, I'm taking motrin, 600.
THE COURT: That's for your back?
JUROR 16: For my back.
THE COURT: Are you retired?
JUROR 16: I'm retired.
THE COURT: Gentlemen, any objection to his—
MR. CHANIN: No objection.
MR. BENNETT: No objection.
THE COURT: You're excused. All right, next?
JUROR 53: Fifty-three.
THE COURT: Your last name?
JUROR 53: Kanemaru.
THE COURT: Kanemaru.
JUROR 53: —maru.
THE COURT: And what's your problem?

JUROR 53: I'm hard of hearing.

THE COURT: Do you use hearing aids?

[26] JUROR 53: Never did.

THE COURT: Could you hear me this morning?

JUROR 53: No. I hardly make out what you're saying.

THE COURT: You're sitting back there?

JUROR 53: Yes, sir.

THE COURT: If you sit here if you sit up here, do you think you can hear?

JUROR 53: I've been working for 44 years and I'm still a welder. Machine is beside me right there, you know,—

THE COURT: Well,—

JUROR 53: —all day long.

THE COURT: —any reason why you don't near me?

JUROR 53: Because I feel that I don't—I don't miss anything. Like listening to you people talk. My vocabulary's very low too. I hardly understand—lot of words I don't understand. You gotta sort of, you know, make me understand, you know? Lot of big words I don't understand, so I think I—I don't need problems like that.

THE COURT: Well, Mr. Kanemaru,—

JUROR 53: I'm only with construction workers,—

THE COURT: Mr. Kanemaru,—

JUROR 53: —and we only make small talk.

THE COURT: —can you near me, what I'm saying?

JUROR 53: Yeah, right here, yeah.

[27] THE COURT: Most of the time they're gonna use a microphone.

JUROR 53: Yeah.

THE COURT: And you'll be sitting in the box.

JUROR 53: I hear vibration only most time. You know. It's been a long time.

THE COURT: Gentlemen?

MR. BENNETT: I have no objection to excusing the juror.

MR. CHANIN: No objection.

THE COURT: All right, you can go now, Mr. Kanemaru.

JUROR 53: Can I?

THE COURT: Yes.

JUROR 53: Thank you.

THE COURT: All right, next?

MR. CASSIDAY: Actually, Your Honor, the purpose of the jurors is to hear the evidence.

JUROR 55: I just wanted to use the bathroom, Your Honor.

THE COURT: We—we—you could listen to my question. I'll—I'll call a recess, sir. Okay, I'll just let you take one. You can go. Come right back and I'll—I'll send the marshal after you.

(End of discussion at side bar)

[28] THE COURT: Anyone here feel that because of their limitation in understanding, reading, or speaking the English language he or she will not be able to intelligently follow the trial proceedings? All right, record'll note no response. Anyone feel they have a most serious and pressing personal problem right now that he or she is involved in and therefore will not be able to devote his or her full attention to the cases? It has to be a very serious—not worrying about your work now. I'm not gonna listen to any work-related excuses. I mean personal problem where there's illness in the family. I—I still see a raising a hand. All right, would you come up here?

(At side bar on the record)

THE COURT: What is your juror number?

JUROR 36: Number 36.

THE COURT: Thirty-six, and your last name?

JUROR 36; Remigio.

THE COURT: Remigio.

JUROR 36: Remigio.

THE COURT: And what is your problem?

JUROR 36: My husband was totally disabled and he's confined in a nursing home, and I have three kids to take care, and I have to be always in a place that they can call me at anytime.

THE COURT: Well, you have no one else?

[29] JUROR 36: I have my sister but she's busy now. She's always busy—always go out.

THE COURT: Well, how often do you visit your husband, ma'am?

JUROR 36: Three times a week.

THE COURT: Three times a week. How many children have you got?

JUROR 36: I have three.

THE COURT: Huh?

JUROR 36: Three.

THE COURT: Okay, and how old are they?

JUROR 36: Fifteen, 14 and 12.

THE COURT: Fifteen, 14 and 12. Well, they all go to school.

JUROR 36: Yes, sometimes they—

THE COURT: Well, can you see your husband after—after—after five o'clock?

JUROR 36: Yes, I can go but sometimes there's a time that he's in serious condition and they have to contact me or—

THE COURT: What's wrong with him?

JUROR 36: I don't—

THE COURT: What's wrong with your husband?

JUROR 36: He got—he had a stroke.

THE COURT: A stroke?

[30] JUROR 36: Yes.

THE COURT: And is he conscious? He can talk?

JUROR 36: No.

THE COURT: He can see?

JUROR 36: He often—well, he's—you know, he's—he doesn't know what's going on around him.

THE COURT: Okay, I'm gonna put a question mark on your name. All right, thank you.

JUROR 36: Thank you.

(End of discussion at side bar)

THE COURT: Anyone else? All right, record'll note no further responses.

(Pause)

THE COURT: The Court having excused those the Court considered cases of extreme hardships, physical disabilities, Court will now commence with the voir dire process. Voir dire or voir dire is a French word meaning to speak the truth. The parties, the—in this case the government and the defendant, demand and do expect that you be candid in your answers to questions put to you in order that they be able to select a panel of jurors that will be fair and impartial and not be swayed or influenced even the slightest by bias, or prejudice, or favor as to any side. As stated early—earlier, you do represent a cross section of the United States and our community with a cross—[31] corresponding cross section of any bias or prejudice, if any, and life experiences that cannot be erased, ignored, disregarded just because you walk into this courtroom. We've got to be—we've got to face this. Therefore, through the process of voir dire we hope to find a panel that will be fair and impartial to both sides in this case. The thing to remember again is that you should recognize your own bias or prejudice, if any, and conscientiously keep it in check and not permit it to influence you in judging the case. And if you feel you cannot do so by all means inform the Court and let the Court decide whether, under the circumstances, you should be excused.

The parties to this case and the Court will appreciate your candid answer to questions that will be asked of you during this procedure.

The jury panel qualified and selected will hear a criminal case and the defendant is Darlina Karen France. The defendant is charged under a three count indictment. The indictment alleges that on or about December 20, 1986 at the Aliamanu military housing area in the District of Hawaii the defendant, Darlina Karen France, did assault her husband, Neil France, by shooting said Neil France with a firearm causing serious bodily injury all in violation of 18 USC 113, Subparagraph A, 18 USC 113, Subparagraph F, and 18 USC 926, Subparagraph C.

[32] The government—the government prosecutor will describe the charges in more detail at the commencement of the trial. I've just given you a gist of the charges in order that you become aware and appreciate the nature of the charges, and whether it will effect your fairness in hearing this case.

At this time I would like to—

THE COURT: New jurors—

THE COURT: Oh, yeah. Okay. We'll fill in those two extra jurors.

THE CLERK: For position number five.

THE COURT: Number five.

THE CLERK: Juror Number 48, four eight, Mary Campbell.

(Pause)

THE CLERK: For position number 23, Juror Number 57, five seven, Warren Vrana.

THE COURT: Five seven, Vrana.

(Pause)

THE COURT: All right, at this time I would like to introduce to you the attorneys and the parties starting with the government. Would you introduce yourself and your associate at counsel table followed by defense counsel and his client at defense table?

MR. BENNETT: Yes, thank you, Your Honor. My name [33] Mark Bennett. I'm an Assistant United States Attorney for the District of Hawaii. With me at counsel table is John Blake, who's a special agent with the FBI here in Honolulu. Thank you, Your Honor.

THE COURT: Thank you.

MR. CASSIDAY: Good morning, ladies and gentlemen of the jury. My name is Ben Cassiday. I'm an attorney representing Karen France who's sitting beside me and the defendant in this case. Thank you, Judge.

THE COURT: All right. Thank you. Next I will ask the attorneys to inform you of the names of the witnesses they intend to call during the trial. A disclosure of the names of the witnesses is done to see if you might know these witnesses personally, and if so whether your friendship would effect your fairness in hearing and deciding this case. This would necessarily include persons who you may personally dislike. If you do not readily recognize a name and need additional information to jog you memory please feel free to raise your hand, if you feel that, "I may know that person," but you need additional information feel free to ask the husband's name, or where they live, employment background, et cetera. I might add that the fact that you may know a witness may not automatically excuse you because we all know people. The fact is that would that personal friendship effect your fairness? That is the [34] bottom line.

Also, we will be calling into Court people that will be bringing in the records. They're recordkeepers, office managers, custodian of records, and all they're doing is bringing in records to verify, authenticate the records so knowing these people I'm sure would not effect your fairness in hearing a case. All right, will the government announce the names of the witnesses it intends to call followed by the defendant?

MR. BENNETT: Yes, Your Honor. The government may call some or all of these witnesses during the trial of this case: Neil France, Stacy France, Ron Bucani (phonetic), Regina Bucani, Lisa Falk (phonetic), Virgil Falk, Carolyn Falk, David Bershbacher (phonetic), Jody Bershbacher, William Albrecht (phonetic), David MacLane (phonetic), John Berof (phonetic), Breta Channing (phonetic), David Chaimberlin (phonetic), Jean Copperman (phonetic), Laura Copperman, and an M.C. who's last name is Zolz, Z-o-l-z, an M.C. who's last name is Hetric, H-e-t-r-i-c-k, and Dr. Kenneth Shaver (phonetic).

THE COURT: Thank you, Mr. Bennett. Anyone need additional information? The record will note no response. All right, those who know or have business dealings with the witnesses whose names was just called by the Assistant U.S. Attorney? All right, record will note no response. [35] Mr. Cassiday?

MR. CASSIDAY; No, Your Honor.

THE COURT: All right. Thank you. The attorneys and the defendant have been previously introduced to you. Anyone know the defendant, Ms.—Mrs. France or any member of the immediate family? The record will note no response. Anyone know the defense counsel, Mr. Benjamin B. Cassiday, the third? All right, record'll note no response. Anyone know the Assistant United States Attorney, Mr. Mark J. Bennett or FBI Agent, Mr. Blake? Record will note no response. Anyone personally know any member of the staff on the United States Attorney's Office in the District of Hawaii? All right, record'll note no response.

This criminal case comes before you by reason of an indictment. The contents of this indictment will be further explained to you at the beginning of the trial itself. At this stage of the trial I have merely given you a brief description of the charges brought against this defendant. This defendant has pleaded not guilty and has thereby raised issues of fact to be resolved by a jury. I wish to impress upon you at the outset that the indictment returned by the Grand Jury is a formal document which the government uses to commence its charges against this defendant and upon which it brings its case into Court; and aside from this, the indictment serves no other purpose [36] whatsoever. The sole purpose of the indictment then is to serve as an accusation or charge which the United States makes against this defendant. It serves to inform the defendant of the crimes which she is being charged and tried. The indictment is not evidence against this defendant and affords no inference of her guilt. The defendant, under our system of law, sits in Court innocent and this presumption of innocence will be with her until the government, who has the burden of proof to establish her guilt beyond a reasonable doubt, proves her guilt accordingly. The burden of proof to so establish guilt beyond a reasonable doubt rests with the government and as such the defendant need not present any evidence in her own behalf. In other words, the defendant has no obligation whatsoever to present any evidence to prove that she is innocent, although she may do so. The defendant is not requried to present any evidence on her own behalf. She does have a constitutional right not to testify and should she decide not to take the stand and rely upon her constitutional right not to testify you are to make no inference of guilt or otherwise hold it against her.

Now, any prospective juror here cannot accept and follow the foregoing principles of law? All right, record will note no response.

Have you or any of your immediate family or close [37] personal friends ever serve as law enforcement officers, be police officers, FBI, Internal Revenue agents, security

guards, et cetera? All right, from the jury box no response. Oh, we have one. Okay.

MR. CASSIDAY: Your Honor, I think there were a couple of responses.

THE COURT: All right. All right, from the jury box here, the first row. Do I see any hands? Your number and name?

JUROR 42: Forty-two, Warner.

THE COURT: Warner? And who do you know?

JUROR 42: My brother.

THE COURT: Your brother? And what—what kind of law enforcement is he in?

JUROR 42: He works for the OCC.

THE COURT: Works for OCC. O triple C. He's a correction officer.

JUROR 42: Yes.

THE COURT: How long has he been a corrections officer?

JUROR 42: Four years. Four.

THE COURT: Four years. Do you see your brother often?

JUROR 42: I live with him.

THE COURT: I see. Do you discuss with him his [38] work?

JUROR 42: No.

THE COURT: No. All right, the fact that your brother works for O Triple C, which is our prison here, and this is a criminal case, would that make you feel uncomfortable in hearing a case?

JUROR No.

THE COURT: You think you can be fair to both sides?

JUROR 42: Yes.

THE COURT: That's all we ask. Thank you. Second row. Yes, your number?

JUROR 48: Forty-eight.

THE COURT: Last name?

JUROR 48: Campbell.

THE COURT: Campbell. All right. How are you related to a law enforcement?

JUROR 48: I don't—no, I don't. related to the defendant, but I know some police officer.

THE COURT: All right, who do you know?

JUROR 48: Milton Yuen.

THE COURT: And how is he related to you?

JUROR 48: He's my godson.

THE COURT: Godson, and he's with the HPD, Honolulu Police Department?

[39] JUROR 48: Yes.

THE COURT: How long?

JUROR 48: About 13 or 14 years.

THE COURT: Okay, and do you see your godson often?

JUROR 48: No.

THE COURT: When you see him—when do you see him? Once a year?

JUROR 48: He comes to the house once in awhile.

THE COURT: I see, and do you—does he discuss law enforcement?

JUROR 48: No, he doesn't.

THE COURT: He doesn't. All right. The fact that you have a godson who is a policeman, and this is a criminal case, you think you can be fair to both sides?

JUROR 48: I should be.

THE COURT: Okay. Well, you've got to be sure.

JUROR 48: Yes.

THE COURT: Okay. Anybody else? All right, let's go to the left—the right side of the courtroom. All right, sir, your number?

JUROR 43: Forty-three, Wilson.

THE COURT: What number?

JUROR 43: Forty-three.

THE COURT: Forty-three, Wilson. Yes, Mr. Wilson.

[40] JUROR 43: I fish with a lot of cops.

THE COURT: Go fishing.

JUROR 43: Yeah.

THE COURT: And how often do you go fishing?

JUROR 43: Every day off I get in a week.

THE COURT: How many officers?

JUROR 43: About six of 'em.

THE COURT: And these are HPD officers.

JUROR 43: Yeah.

THE COURT: Honolulu Police Department. Now, do you people discuss law enforcement?

JUROR 43: No.

THE COURT: You don't. Now, this is a criminal case and we expect you—you give both sides a fair shake. The fact that you have friends and go fishing with policemen, would then in any way favor one side over the other?

JUROR 43: No.

THE COURT: All right. You think you can give both sides a fair—fair trial.

JUROR 43: Yes.

THE COURT: All right. Thank you, Mr. Wilson. All right, anyone in the first row? Second row? Yes, your number and name?

JUROR 20: Twenty, Lee.

THE COURT: Twenty-eight?

[41] JUROR 20: Twenty.

THE COURT: Twenty. Your last name?

JUROR 20: Lee.

THE COURT: Lee. All right, who do you know?

JUROR 20: FBI Agent.

THE COURT: And how is he related to you?

JUROR 20: Just a friend.

THE COURT: Okay, and what's his name?

JUROR 20: Hilton Lui.

THE COURT: Hilton Lui. How long have you known Mr. Lui?

JUROR 20: Oh, about for 10 years.

THE COURT: Ten years, and do you socialize with him?

JUROR 20: No, hardly.

THE COURT: Hardly. When the last time you saw him?

JUROR 20: Oh, quite some time ago, over a year ago.

THE COURT: Over a year ago.

JUROR 20: Yeah.

THE COURT: All right. You understand that the witnesses in this case is an FBI agent and you know Mr. Lui, who is an FBI agent. Would that in any way affect your fairness in hearing his case?

[42] JUROR 20: No.

THE COURT: You think you'd be fair to both sides.

JUROR 20: Yes.

THE COURT: That's all we ask. All right, anyone else? Let's get back here. You number?

JUROR 1: Number 1.

THE COURT: Last name?

JUROR 1: Akana.

THE COURT: Yes, Mr. Akana.

JUROR 1: I know the police chief on Kauai.

THE COURT: And how are you—are you related to him?

JUROR 1: No.

THE COURT: And how often do you see him?

JUROR 1: Once for two months and once for three months.

THE COURT: Again, same question. Do you people sit down and talk about law enforcement?

JUROR 1: Never.

THE COURT: All right, this is a criminal case. The fact that you know the chief of police of Kauai, would that in any way effect your fairness in hearing this case?

JUROR 1: None whatsoever.

THE COURT: You'd give both sides a fair shake.

JUROR 1: Right.

THE COURT: All right. Anyone else in the right section—center section? Sir?

JUROR 21: Number 21, Lemmons.

THE COURT: Yes, sir.

JUROR 21: I am employed at OCC, state correctional officer—adult correctional officer.

THE COURT: I'm sorry?

JUROR 21: I am a—I'm a adult correctional officer at OCC.

THE COURT: Oh, I see. You are an adult correction officer.

JUROR 21: Yes, sir.

THE COURT: And how long have you served in that capacity?

JUROR 21: Three years, sir.

THE COURT: Three years. And this being a criminal case, Mr. Lemmons, and you are a Triple C Correction Officer, would that in any way effect your feeling about deciding a criminal case?

JUROR 21: No, sir.

THE COURT: You think you can be fair to both sides?

JUROR 21: Yes, sir.

THE COURT: All right, basically all you do is just take the evidence as given to you in this courtroom, [44] not from outside, and then take the law as given to you by the judge and then apply it. That's all we ask, all right? Anyone else? All right, sir.

JUROR 27: Number 27, Marouchoc.

THE COURT: Yes.

JUROR 27: I have occasional contact with Mr. Lui of the FBI and Mr. Cole, the vice president's counsel are on Drug Intervention. I'm the security manager at Fort Shafter.

THE COURT: As a department of OCC?

JUROR 27: Yes, sir.

THE COURT: Civilian?

JUROR 27: Yes, sir.

THE COURT: You're in security.

JUROR 27: Security military information and counter intelligence.

THE COURT: Oh, I see. It's not the police type of—

JUROR 27: That's right, it's not.

THE COURT: All right. Same question. Would that fact influence your fairness in hearing this case?

JUROR 27: No, Your Honor.

THE COURT: All right, thank you. Anyone else? All right, record'll note no further responses. Law enforcement officers will be testifying as witnesses in this [45] case. Would any of you be inclined to give more credence to the testimony of a law enforcement officer than a civilian witness simply because he is a law enforcement officer, or simply put, would you believe a law enforcement officer more than a civilian just because he is a law enforcement officer? All right, record'll note no response.

Now, we flip the coin, on the other hand would any of you be inclined to give less credence to the testimony of a law enforcement officer than a civilian witness simply because he was a law enforcement officer would you be less believing just because he's an officer? The record will note no response.

Anyone here is a lawyer, studied law, married to a lawyer, or worked in a law office, or is working in a law office? All right, we have one back here. Your number and name?

JUROR 9: Number 9, Margaret Donegan.
THE COURT: Number 9?
JUROR 9: I was married for 18 years to an attorney. He died three years ago.
THE COURT: Oh, I see. Passed away. And did he do any criminal work?
JUROR 9: Yeah.
THE COURT: Hmm?
[46] JUROR 9: Yes.
THE COURT: He did? All right. And did he discuss with you—
JUROR 9: He was in this courtroom twice for two cases.
THE COURT: That's—
JUROR 9: Just two.
THE COURT: Your husband is Donegan?
THE COURT: And you say he was doing criminal work?
JUROR 9: Criminal and civil.
THE COURT: Civil. All right. Did you discuss with your husband while he was alive about criminal law and—
JUROR 9: No so much criminal, no.
THE COURT: All right. This is a criminal case. Would that in any way, the fact that your husband was a lawyer, effect your feeling or your fairness in hearing his case?
JUROR 9: No.
THE COURT: No. You have no opinion as to one way or the other. All right, thank you, Ms. Donegan. Anyone else? Yes.
JUROR 37: Thirty-seven, Rivera. I did study as a [47] legal assistant, but presently I'm not practicing.
THE COURT: A legal assistant. How long ago?
JUROR 37: From '82 to about '85.
THE COURT: And which law firm?

JUROR 37: I was an independent contractor so I didn't really work for a firm per se.
THE COURT: Do you have a law degree?
JUROR 37: Yes.
THE COURT: Oh. You're a legal steno?
JUROR 37: Legal assistant. I do have a—a graduated—
THE COURT: I see. Do you qualify as a paralegal?
JUROR 37: Yes, I'm qualified—
THE COURT: Oh, you're a paralegal.
JUROR 37: Yes.
THE COURT: All right, did you do any criminal work?
JUROR 37: No.
THE COURT: No. All right. Do you feel you can be fair and impartial in hearing this criminal case?
JUROR 37: Yes.
THE COURT: All right, thank you. Anyone else? All right, record will note no further responses. Anyone here, because of the nature of their employment, because the type of work they do would feel uncomfortable in the sense [48] that they may not be able to judge this case impartially? We had a few, which I question. All right, record'll note no responses. Any prospective juror member here ever sue the U.S. government or was sued by the U.S. government? Basically we ask that question so that—find out if you have bad feelings against the government. I guess we have, but not enough to make you be biased. All right, anyone has sued the government or has sued? All right, record'll note no response. Anyone here was a victim of a crime? All right, record'll note no response. Anyone here testified in a criminal case either for the government or for the defense? We have one. All right, you're Mr.—Juror 21?
JUROR 21: Twenty-one.
THE COURT: Yes. You've testified in a criminal case.
JUROR 21: Yes, sir.

THE COURT: And were you subpoenaed?

JUROR 21: Yes, sir.

THE COURT: I see. And what kind of case was that?

JUROR 21: It's an assault case that's in—where I was assaulted by an inmate.

THE COURT: Oh, in other words, an assault within the prison.

JUROR 21: The OCC itself.

[49] THE COURT: Oh, I see. There were two inmates involved in a fight?

JUROR 21: No, sir. An inmate and myself where he assaulted me.

THE COURT: Oh, I see. All right. This is an assault case also. You being a victim of assault, would that in any way color your thinking in hearing this case?

JUROR 21: No, sir.

THE COURT: All right. Anyone else? The record'll note no further responses. A handgun was used in this case. Have anyone ever support any gun control legislation? In other words against guns. All right, record will note no response. Assuming that alcohol consumption was involved in this case, there was some drinking, would this fact color your perspective in that you may not be able to fairly and impartially hear this case? All right, record will note no response. Have any of you had experience or done any work with a program or agency concerned with drug or alcohol abuse? All right, record'll note no response. Anyone here read in the newspapers, seen on television, or heard on the radio anything about this case? All right, record will note no response. Having heard the questions put to you by the Court does any other reason suggest itself to you as to why you could not sit on this jury and render a fair verdict based on the evidence [50] presented to you in the context of the Court's instruction to you on the law? Did I miss anything? All right, record'll note no response.

Now, we get to a point where the attorneys are anxiously waiting, would like to know something about you 32 jurors. Now, instead of me asking you questions I'm gonna pass out some questionnaires. I'll give you time to read the questions. They're very simple. Something about your background, married, working, how many children, et cetera, and without reading the question would you answer the question and we will assist you. Now, you will note that in the State Court—in a State Court the jurors are called from Oahu only, but you will note that in the Federal Court we draw our jurors from the entire state so in a way I'm sure you're curious to know who's sitting next to you because some are from outside islands, and I always know which juror is from the outside island because they show up in Court with a small handbag. They expect to stay over, see. Read the questions and I'm going to ask first row, first question to you to stand up and then as loud as you can answer the questions that's on the list. You need more time?

JUROR 5: No, sir.

THE COURT: All right, fine, and we'll go down the line and jump back to you, sir.

[51] JUROR 5: My name is Harriott Michele Dominque Pichez (phonetic) Burrell. I've been a resident of this state for approximately 17 years. I am single. I'm a nurse at Kaiser Hospital for almost seven years. I'm not married. I have two children, seven and 12, and I have no one living with me.

THE COURT: All right, thank you. All right, next?

JUROR 55: My name is Harold Suetani. I'm from Wahiawa. I'm—I live there 58 years, married, have five children. I work at Hawaiian Electric Company for 33 years. I was in the service in Korea, and —and I'm still working at the Hawaiian Electric.

THE COURT: Mrs.—what is your wife's first name?

JUROR 55: My wife's first name is Lidau (phonetic).

THE COURT: Where does she work?

JUROR 55: Pardon me?

THE COURT: Where does she work?

JUROR 55: She doesn't work. She's at home.

THE COURT: Housewife.

JUROR 55: Housewife.

THE COURT: All right. Thank you very much. Mr. Kon?

[52] JUROR 17: My name is Harry M. Kon. I've been livin here for 28 years. I've just been married. My occupation is a passenger agent for Wardair Canada. My wife's name is Andrea Kon. We have no children yet.

THE COURT: One on the way.

JUROR 17: One on the way. No military, I'm not retired, and I still live with my parents for the next two months.

THE COURT: All right. Thank you, Mr. Kon. Incidentally, if you ladies live all your life in Hawaii don't tell us how many years, just say all my life. Okay? All right, Mr. Higa.

JUROR 52: My name is Walter Higa from Koko Head. I've lived in Hawaii all my life. I'm single. I work at Hickam Air Force Base for six years. I was in the Air Force for six years and 10 months.

THE COURT: All right, thank you, Mr. Higa. Mr. Makua.

JUROR 24: My name's Michael Makua. I live in Moiliili. I lived there all my life. Single. Work for Hoitang and Butch (phonetic) for 22 years and National Guard for six years.

THE COURT: All right, thank you, Mr. Makua.

JUROR 54: My name is Manuel Perreira. I lived in Hawaii all my life. I'm married. My wife is alive. [53] Occupation at Pearl Harbor Naval Shipyard for 55–50–55 years. My wife's name is Helen Perrerira, retired from Kaluma (phonetic) High–Kamuma (phonetic) High School. I have three children. I don't know what their age are though. They're all married. I was in National Guard for seven years. I–I been retired for–at 55, so I'm 70, so that's what? Twenty-five–27 years? I have no relatives stay with me right now.

THE COURT: All right, thank you.

JUROR 54: Only my wife and myself.

THE COURT: Don't feel bad. I have one son and I still don't know his age.

JUROR 54: I have three.

JUROR 42: Theresa Warner from Laie, Oahu. I've been resident for Hawaii all my years and right now separated. My occupation is seamstress for the Polynesian Cultural Center. My husband's name was Edward–is Edward Warner. I have one boy. I live–in fact my brother lives with me. He has a wife and four children.

THE COURT: What does your brother do for a living?

JUROR 42: He works for that Triple C.

THE COURT: Oh, Triple C. All right, thank you.

JUROR 51: My name- excuse me, my name is Cathy Kim and I live in Mililani Town. I've been here all my life. [54] I'm married. I'm an operations supervisor for two years. My husband's name is Milton and he's self-employed. I have no children and I have no one living with me.

THE COURT: All right, thank you. Maybe you can–I'm sure you've got a loud voice. You can–

JUROR 23: Beg pardon?

THE COURT: You have a loud voice. You can do it from there without coming down.

JUROR 23: Yes.

THE COURT: Sure.

JUROR 23: My name is George Maehara. I live in Kaimuki, and I've been living here all my life. I'm married. I work at Camp Smith for the federal government. My wife's name—my wife's name is Juliet and she also works for the federal government. She's employed as a (indiscernible). We have two children. I was drafted in the Army, served for two years.

THE COURT: All right, thank you. Ms. Portillo?

JUROR 35: I'm Catalina Portillo. I live in Makiki. I stay here in Hawaii for 31 years. Married. My occupation is Hawaii aid almost one year and relief services at the (indiscernible) center. Married to (indiscernible) Portillo. He's a production security manager. I got one child. (Indiscernible) 14 years old. And I'm not retired. I'm not retired and I don't live any other people.

[55] THE COURT: Your husband worked what kind of security?

JUROR 35: Security at Black Hills of Hawaii.

THE COURT: Oh, Black Hill.

JUROR 35: Yeah.

THE COURT: He wears a uniform? Policeman's uniform?

JUROR 35: Just regular work—

THE COURT: Oh, regular work.

JUROR 35: Yes.

THE COURT: Carry gun?

JUROR 35: No.

THE COURT: All right, thank you. Mr. Akana.

JUROR 1: My name is William Akana from Wailua, Kauai. I've been a resident here all my life. Married. I own an insurance agency and my wife's name is Margaret and she works for me. I have one son 25—26 and he works for me, and I've been in the Army for two years.

THE COURT: All right, thank you, Mr. Akana. Ms. Rivera?

JUROR 38: My name is Yolanda Rivera. I live in Kilauea, Kauai and I work for Princeville as a chambermaid for 14 years. I have four children, ages are 25, 23, 21, and 18. I'm not retired yet but I think it's progress.

THE COURT: All right, thank you.

[56] JUROR 48: My name is Mary Campbell. I'm a widow. I live here all my life. I have two children that's married. One is divorced and the other is still married, and I have seven grandchildren.

THE COURT: Are you working?

JUROR 48: Hmm?

THE COURT: Are you working?

JUROR 48: No, I'm retired.

THE COURT: Retired. What kind of work did you do?

JUROR 48: A little bit of everything.

THE COURT: Oh, a little of everything. All right, thank—

JUROR 48: I retired 11 years ago.

THE COURT: Eleven years. All right, thank you.

JUROR 44: My name is Jack Yama. I've been living here all my life, and I'm a widower, and I have three sons. Two serve in the military and I've been retired for 16 years.

THE COURT: What kind of work did you do, Mr. Yama?

JUROR 44: I used to building/maintenance inspector.

THE COURT: All right. Thank you.

JUROR 37: I'm Linda Rivera. I've lived here all my life. I'm single. Presently I'm a realtor associate for [57] Century 21. Let's see, I also have a sister who works for the DOE who lives with me.

THE COURT: All right. Thank you.

JUROR 9: Meg Donegan from Kailua. I've lived here 21 years from New York. I'm a widow. I work at the (indiscernible) Center at the University of Hawaii for the Jesuit order. I have five children. They're 30, 29, 26, 25,

and 19. My oldest one is a garbologist and he converts garbage in Florida to electricy. I have a son in management that just was hired by Bank of Toronto. I have a daughter in Arizona that's a hostess. I have a son in Pauao, and he's computer specialist, and I live with my youngest daughter, 19, which is a freshman at Chaminade.

THE COURT: He's a garbologist.

JUROR 9: Yes.

THE COURT: He won't have any trouble finding work.

JUROR 9: No.

THE COURT: Never run out of garbage. All right, let's go—yes.

JUROR 3: I'm Lisa Bernhardt. I live in Kaawa for eight years. My husband's name is Ken and he's a draftsman. We have a son that's two. We're not retired. In military, no. He was four years ago, and my mom was living with us for a few months, but she found her own place.

[58] THE COURT: All right, thank you.

JUROR 50: My name is Sally Kido. I'm from Aiea and I've been a resident of Hawaii all my life. I'm married. I'm a housewife. My husband's name is Fomeo Kido (phonetic). He retired from Pearl Harbor Shipyard. I have two children, 29 and 32. My daughter is a speech pathologist, my son is an electrical engineer. Let's see—

THE COURT: Thank you, Ms. Kido.

JUROR 47: My name is Thelma Aana. I've been a resident of—all my life in the state of Hawaii. I'm married and I have 25 years with the Army but presently for five years I'm workin' as a warehouse worker for the Army at Kapalama Military Reservation. I have four children and one is 33. She's an education specialist for Cam School on Kauai, and I have a son that's 30. He's a fireman/paramedic on Kauai, and I have another son, 27, he's an electronic tech on Kauai for the cocaine tracking station, and I

have a daughter 23, she's presently a nursing student at the UH.

THE COURT: All right, than you.

JUROR 32: My name is George Nip from Mililani. I've been in Hawaii for 30 years, which is most of my life. I'm single and I presently work as an accounting manager at Oceanic Properties.

THE COURT: All right. Thank you. Mr. Wilson?

JUROR 43: My name's David Wilson. I'm from [59] Kalihi. I live here all my life. I'm single but I live with this girl for 11 years. We have two children and she works for Interested Parties, an exchange on Ala Moana Boulevard. No military, and I work for Foodland Meat Company.

THE COURT: Foodland. Thank you.

JUROR 36: My name is Felicitas Remiglo. I've been here in—from Kalihi. I've been here in Hawaii for 17 years. I'm married. I work here in Federal Building as a custodian and my husband retired from U.S. Army, Fort Shafter, and we have three children, 15,—ages 15, 14, and 12.

THE COURT: Thank you.

JUROR 20: My name is Norman Lee. I live here in the part of Kaimuki. I live here all my life. I'm a business loan officer at Bank of Hawaii for about a little over a year and I—I served in the National Guard for eight years.

THE COURT: Thank you.

JUROR 14: My name is Ray Ishihara from Waimea, Kauai and I lived there all my life. I am assistant manager, meat cutter, fish cutter for Ishihara Market, and I'm single, and I live with my parents.

THE COURT: All right, thank you, Mr. Ishihara.

JUROR 57: My name is Warren Vrana. Been a [60] resident for 19 years. I'm married. I'm a teacher with Venicular (phonetic) section of Pearl Harbor. Been at that for 15 years. My wife's name is Marilyn. She's currently a

housewife. No children, military service, currently employed, and no friends or relatives living with me.

THE COURT: Thank you.

JUROR 4: My name is William Biga from Lanaina, Maui. I live there all my life. I'm married. My wife's name is Billie Biga. I have four kids, five, four, three, and two, and I work for Hawaii Beautiful.

THE COURT: Is your wife working?

JUROR 4: Housewife.

THE COURT: Housewife. Thank you, Mr. Biga.

JUROR 22: My name is Jason Lum. I live in Kaneohe. I lived there all my life. I'm single. I work at Au's Plumbing. I'm a sheetmetal worker and I live with my parents.

THE COURT: Thank you.

JUROR 13: My name is Jon Inafuku. I live in Oahu. I live there all my life. I'm single. I work at Casing and Grading, Incorporated. I've worked there six years and I live with my parents.

THE COURT: All right, thank you.

JUROR 8: My name is Justina Desuacido. I'm from Mililani. I've been a resident of the state 15 years. I'm [61] married. I work as a tax foundation employee. My husband's name is Robert. He works at Wanhola (phonetic) Hospital. We have two children, eight and four.

THE COURT: Thank you.

JUROR 59: My name is David Wong from Pearl City. I living here all my life, single, optic technician for Circle Office Systems, still living with my parents.

THE COURT: Thank you, Mr. Wong.

JUROR 18: Garrett Kuehu from Wainea, Kauai. I've lived there all my life, single, equipment operator for (indiscernible).

THE COURT: All right, thank you.

JUROR 41: My name is Joe Tato. I live in Honolulu. I've been living here for nine years. I'm single. I work as a

respiratory therapist at Kaise, at Straub (phonetic), and sometimes I do home care work with Gastraub (phonetic). No military service and I'm not married.

THE COURT: Thank you. All right, that completes—would the—would the attorneys for the first trial approach the bench?

(Bench conference on the record)

THE COURT: The Court has completed its voir dire questions. Do you have any voir dire questions you would like the Court to ask at this time?

[62] MR. BENNETT: Yes, Your Honor. Did the Court get the government's proposed voir dire?

THE COURT: Yes, I did.

MR. BENNETT: Okay. I think in this case I'd like the Court to ask our question number three, which asks about whether the jurors have themselves been involved in any kind of serious domestic problems, or whether their close relatives or very close friends have similarly been involved in serious domestic problems because I think in a case involving a serious domestic dispute that's an important—an important issue.

THE COURT: Well, the reason I decided not to give that because of I generally give it—not even a domestic problem. Now, what serious domestic problem is confusing. What is serious? I mean each juror may think what happened was serious in his life. I think it's just going to open a pandora box. We all have domestic problems unless you can be specific like "Have any of you shot your husband? I'd like to know?" I'll rely on you—

MR. CASSIDAY: I've got to object to that, Your Honor.

MR. BENNETT: I mean, I think if there's been any kind of violence or close friends or close relatives that have had violence, and from that stipulations. I think that that's important to know really for both sides, whether they

[63] might have been victim of it, or they might have been a perpetrator of it, or—or have close friends who are—who are very close friends, or close relatives who are either victims or perpetrators. I think that that's important.

THE COURT: Weil, that question would—would be of interest to the defendant or to the government? That question would apply to the defendant or the government?

MR. BENNETT: Well, I think—I think the answer would be important to both sides in picking a jury.

THE COURT: Well, you will note that I initially asked—they know the nature of this case. I told them it was a shooting of a husband. I did ask that, the nature of the case, knowing the nature of the case, would that in anyway effect (indiscernible). I think that answer's not needed. Did they shoot their husband before they'll let me know. All right, I would—the Court has reason to decline. Do you have any additional—

MR. CASSIDAY: There's just two errors that are a little concern to my client. First of all, it's been my experience that some people are adamantly opposed to the private ownership of handguns, and I've had people say they couldn't sit on juries if the handgun was involved. I know you asked the question—

THE COURT: About the gun control.

MR. CASSIDAY: Yeah, about gun control, but if you could just follow that up by just asking if anybody is so [64] adamantly opposed to handguns—the use and private ownership of handguns they couldn't sit on the case. That would be one thing, and then the other thing is that the victim of the case is—is a Vietnam veteran and it's been my experience also that some people have very strong positive or negative feelings relative to Vietnam veterans.

THE COURT: I also consider the question similarly like Mr. Bennett. I'm going to refuse the first one because I did

ask the question. Secondly, I told them all the nature of this case. If they really can't handgun they woulda let me know. They know the position of the case.

MR. BENNETT: I have no objection to having that question asked. The one about the—the handgun.

THE COURT: And then secondly, I don't think people either love or hate the Vietnan veteran, first—first—I'll deny that.

MR. BENNETT: I would indicate that with regard to the one question about handguns, I have no objection to the Court asking it and I don't think it would take very long and I think—

THE COURT: All right.

MR. BENNETT: —I think counsel's—

THE COURT: Anything else?

MR. BENNETT: —entitled to know it.

THE COURT: Anything? All right, I'll ask the [65] last question over.

(End bench conference discussion)

THE COURT: Ladies and gentlemen, the prospective jurors then, I have one last question. As you know, this case involved the use of a handgun, which is a pistol or revolver, and anyone here feel so strongly against owning handgun, I mean, licensed handgun or registered handgun, that they feel that they cannot fairly hear this case? All right, record'll note no response. I'm gonna take a short recess. You've been very patient, and during that recess I expect attorneys to work on their preemptory challenges.

Ladies and gentlemen of the prospective jury panel, you all have been passed for cause and now the attorneys will be permitted to exercise their respective preemptory challenges. Again, if you are excused do not take this personally because you may be excused for reason beyond your control, nothing to do with your character or your in-

tegrity. All right? Something in your background that you cannot control may have effected the attorneys and ask that you be excused to hear this case. You may be perfectly qualified to sit on a civil case or another criminal case. We'll take a ten-minute break. Would you be back here by 11:40. All right? Thank you.

THE CLERK: All rise. His Honor the Court stands in recess for 10 minutes.

[66] (Jury out at 11:27 a.m.)

(Recess at 11:27 a.m., until 11:42 a.m.)

(Jury in at 11:42 a.m.)

(Call to Order of the Court)

THE COURT: Please be seated.

THE COURT: All right, the record will note the presence of the parties and their respective attorneys. We'll take a short pause while the attorneys complete their respective preemptory challenges.

(Off the record at 11:43 a.m., until 11:51 a.m.)

THE COURT: The Court will excuse the following jurors. When you're excused would you return to the—remain in the courtroom because you'll be involved in the second jury selection. All right, so don't leave the courtroom. Court will excuse the following prospective jurors: Juror 23, Mr. George Maehara; Juror Number 1, Mr. William Akana; Juror 48, Mary Campbell; Juror 44, Jack Yama; Juror 37; Linda Rivera; Juror 9, Margaret Donegan; Juror 55, Harold Suetani; Juror 17, Harry Vaughn—Kon—Harry Kon; Juror 52, Walter Higa; Juror 42, Theresa Warner; Juror 3, Lisa Bernhardt; Juror 50, Sally Kido; Juror 4, William Biga; Juror 57, Warren Vrana; Juror Two Zero, Norman Lee; Juror 8, Justina Desuacido; Juror 18, one eight, Garrett Kuehu; and lastly, Juror 41, Joseph Tato. All right.

[67] (Pause)

THE COURT: All right, I can finally address you as members of the jury. You have now been selected as jury to try the case of United States of America versus Darlina K. France. The trial will commence as indicated, tomorrow, at which time you will be further instructed by the trial judge as to your duties and functions as a jury. In the meantime you must not discuss the case in any manner among yourselves or with anyone else, and you must not permit anyone to attempt to discuss it with you or in your presence. You are further instructed that in order to avoid even the appearance of impropriety you should have no conversation whatsoever with either the lawyers in this case or with anyone you may come to recognize as having some connection with the case.

You must also avoid reading any newspaper articles that might be published about the case and you must also avoid listening to or observing any broadcast news program on either televison or radio because of the possibility that mention might be made of this case during such a broadcast. The reason for these cautions, of course, lies in the fact that it will be your duty to decide this case solely on the basis of the testimony and evidence presented during the trial without consideration of any other matters whatsoever.

[68] The criminal trial will progress this way, the government attorney, the prosecutor, will start the trial by making an opening statement. In his opening statement he will attempt to outline what the government hopes to prove in this case. In his opening statement he will, by brief description of the case, attempt to give you an outline or sort of a bird's eye view of the case so that you may be able to logically and intelligently follow the testimony, the evidence, and the direction of the trial.

The defense attorney may or may not make an opening statement, and this decision is solely up to him. You

should not give any weight or inference one way or the other of the innocence or guilt of this defendant just because the defense attorney makes or did not make an opening statement.

Then the government will follow its opening statement by presenting its evidence, and when the government feels it has completed presenting its case it will indicate this by informing the Court that the government rests. When the government rests its case the defendant may or may not introduce any evidence, or may or may not testify. As previously instructed, the fact that the defendant does not introduce any evidence or does not take the stand should not be in any way held against her because the burden of proving the defendant guilty always rests with the government.

[690 Both sides having rested, you will hear arguments from the attorneys. You will note that the prosecutor will address you on two occasions while the defense attorney only once. This is fair and according to the law because the government has the burden, the—permitted to address you twice. Once, the opening argument, and then rebuttal argument. The government will make his opening argument followed by defendant's final argument and then by the government's rebuttal argument. After the attorneys have completed their arguments the Court will instruct you on what the law is as it is applicable to this case, then you will retire into the jury room to deliberate.

The Court has reserved for you two rooms for your use and comfort. It's sitted—situated on both sides of the elevator. I would strongly recommended that you use these room for your comfort and stay close to these rooms so in case the trial resumes they can readily reach you. This is also to prevent any accidental contact with any witnesses in the case or coming in contact with the public.

The Court will issue each of you jurors identification badge indicating that you are a juror. Please wear this at all times while in the courthouse because the public and the witnesses may not be aware of your status. Once you wear this badge people will stay away from you.

You will also note that throughout the trial that [70] the attorneys, both the prosecution and the defense attorney will not be all too friendly with you. This is because as attorneys involved in this trial, ethically they cannot even show an appearance of impropriety, meaning they cannot be seen talking to you. They probably will say, "good morning" or "good afternoon." This is about all. If you ask questions they will look you coldly and walk away, so don't hold it against the attorneys. They are forbidden to talk to you.

If you receive a parking citation give it to the Court Clerk. Do not park at a tow away zone because then the Court cannot assist you on that.

We have a cafeteria in the next building. This is the courthouse building. Do you know this is separate from the administration building? There's a cafeteria in the fourth—fifth floor you may use. They open for breakfast at 6:30 a.m. and lunch continues til 3:30. You're free to use that cafeteria facilities.

In this particular case, this criminal case, the trial will go from 8:30 to one o'clock and recess for the day. All right. One o'clock will be the recess. Tomorrow special—

THE CLERK: That's for the civil case.

THE COURT: Oh, that's for the civil case? Oh, I'm sorry, I got confused with the next case. This case [71] will go from 8:30—I'm sorry, from nine o'clock to one—one—12:00 noon, take a lunch break, come back at 1:30 and go until 4:00 or 4:30 depending on the scheduling. You will report—this jurors report tomorrow, 8:30. Be sure you come down at 8:30 to Room C-306. That's the

third floor by the clerk's office. As long as you go down to the clerk's office they'll direct you to the jury room, 8:30, Room zero – I'm sorry, C-306.

Will the attorneys in this criminal case approach the bench?

(Bench conference on the record)

THE COURT: For the record, would you like – is there any objection you'd like to make in the manner in which the jury was selected?

MR. BENNETT: No, Your Honor.

MR. CASSIDAY: No, Your Honor.

THE COURT: Thank you, gentlemen.

(End of bench conference)

THE COURT: The Court at this time will excuse the two – 12 jurors and two alternates who were qualified and selected together with the attorneys and clients. Again, tomorrow, 8:30, Room 306. Will the court rise? You're – you're excused. You're excused. Go ahead.

(Whereupon at 12:01 p.m. the proceedings in the above-entitled matter were adjourned to reconvene at 9:00 a.m., on [72] April 28, 1987.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Marie Stephens
Transcriber

March 14, 1988
Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CR. No. 87-00079

UNITED STATES OF AMERICA, PLAINTIFF

vs.

DARLINA K. FRANCE, DEFENDANT

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date August 7, 1987, with counsel Benjamin Cassiday, Esq.

There being verdict of guilty. Defendant has been convicted as charged of the offense(s) of having on or about December 20, 1986, in the District of Hawaii, committed assault with a dangerous weapon, the lesser included offense, in violation of Title 18, United States Code, Section 113(a), as charged in Count 1 of the Indictment and committed assault resulting in bodily injury, in violation of Title 18, United States Code, Section 113(f), as charged in Count 2 of the Indictment; and used and carried a firearm during and in relation to crimes of violence in violation of Title 18, United States Code, Section 924(c) as charged in Count 3 of the Indictment.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the

court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of as to both counts 1 and 3:

It is adjudged that the imposition of sentence is hereby suspended and that the defendant is placed on probation for a period of THREE (3) YEARS upon the following terms and conditions:

1) That the defendant comply with all local, state and federal laws.

2) That defendant comply with the lawful direction of the Probation Office.

3) That the defendant shall not at any time, place, nor for any purpose, ingest any alcoholic beverage.

Probation shall commence upon release from confinement. The sentence as to probation imposed on Count 2 shall run concurrently with that imposed on Count 1.

AS TO COUNT 3:

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of FIVE (5) YEARS.

IT IS FURTHER ORDERED that the defendant pay a special assessment of $50.00 as to each of Counts 1, 2 and 3.

/s/ Robert J. Kelleher
U.S. District Judge

Supreme Court of the United States

No. 89-1363

UNITED STATES, PETITIONER

v.

DARLINA K. FRANCE

ORDER ALLOWING CERTIORARI

Filed April 23, 1990

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

April 23, 1990

U.S. GOVERNMENT PRINTING OFFICE: 1990—262-203/30015